

Juvenile justice in Belgium

Balancing between responsabilisation and rehabilitation

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- A brief history of youth justice in Belgium
 - 1912 – 1965 – 2006
 - 2019 Flemish Youth Delinquency Decree
- New choices for a future youth justice system
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 - Responsibility of young offender
- Conclusion

Introduction

- Reflections from an outsider
 - Outside this project
 - Not involved in ‘individual assessment’
- Belgium youth justice
 - Probably most welfare-oriented in the world
 - Currently ‘under construction’
 - Towards a hybrid system
- Parallel debates and questions in other EU countries

A brief history of youth justice in Belgium

- 1912 Children's Protection Act
 - Before
 - adults = children
 - gradual changes in child labour, school, leisure...
 - 20th Century
 - discovery of childhood as separate phase in life
 - new academic disciplines
 - Century of the Child

A brief history of youth justice in Belgium

- 1912 Children's Protection Act
 - Children (below 16) ≠ adults
 - La '*défense sociale*'
 - interventions between care and security
 - incapacitation of 'classes dangereux'

A brief history of youth justice in Belgium

- 1965 Youth Protection Act
 - In line with post-WOII ‘ideals of penal welfarism’
 - Welfare protectionist approach
 - children (below 18) ≠ adults
 - minors ≠ (criminal) responsible
 - commit ‘an act defined as offence’
 - ‘measures’ rather than sanctions

Belgium as...

‘... the archetypical example of a juvenile justice system based on welfare protectionism’

A brief history of youth justice in Belgium

- However, not without discussion...
- Four different critiques
 - Doubtful effectiveness of the welfare system
 - Too soft on serious crime
 - Lack of legal safeguards and compliance to international standards
 - Where is the victim?

Belgium as...

'... a fairly good example of the hesitations that are reflected in juvenile (criminal) justice developments in Europe'

A brief history of youth justice in Belgium

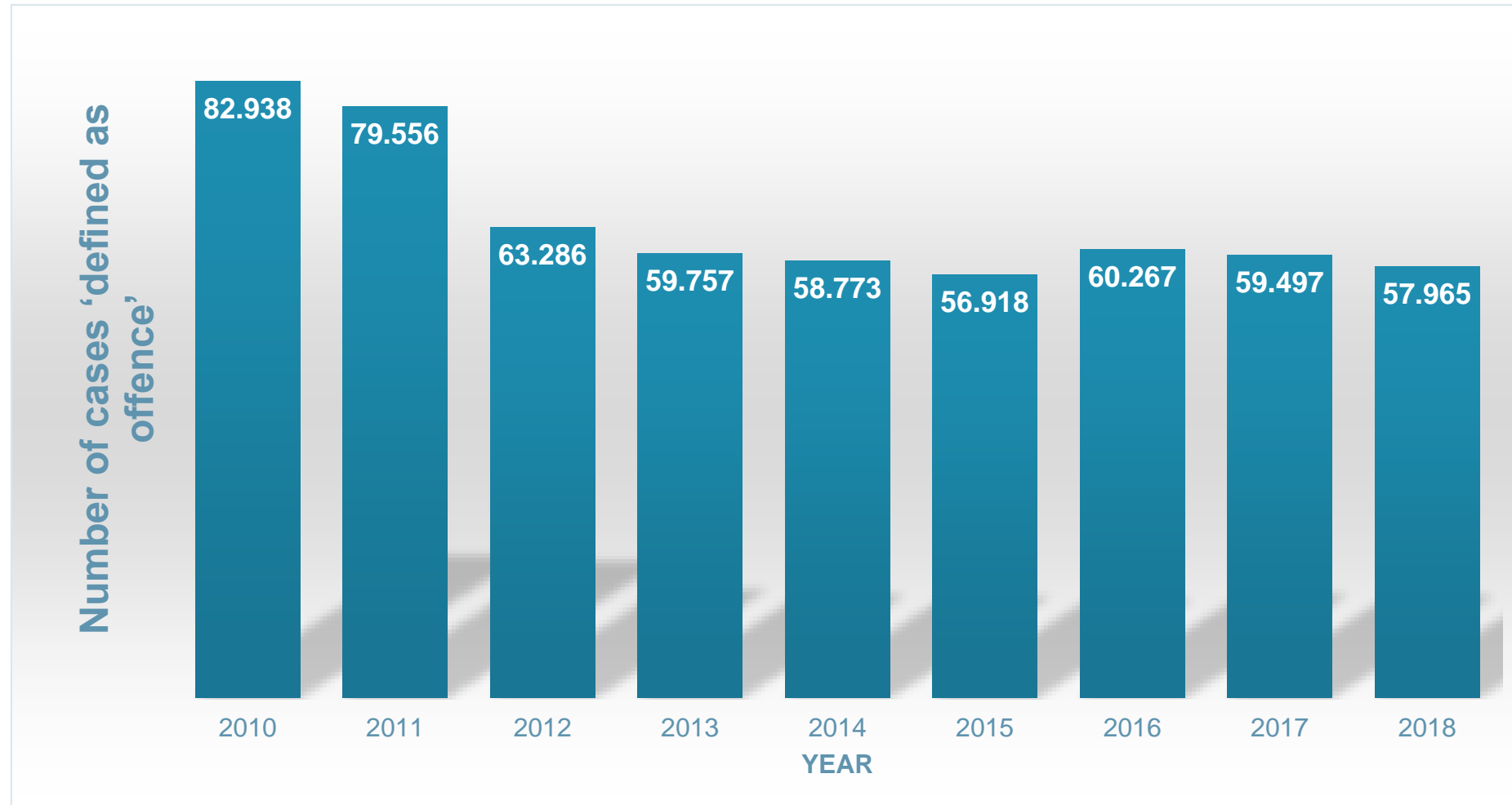
- 2006 Youth Justice Act
 - Settles political discussions (for the moment)
 - Reaffirms welfare and protectionist model, but ...
 - adds legal rights
 - adds alternative measures
 - introduces a framework with priority for restorative justice practices
 - Hybrid model of youth justice

A brief history of youth justice in Belgium

- 2019 Flemish Youth Delinquency Decree
 - A new State reform
 - Youth delinquency as a competence of Communities
 - Flemish Community
 - French Community
 - German speaking Community
 - Brussels-Capital Region



A brief history of youth justice in Belgium



New choices for a future youth justice system

- Main objectives of Flemish Youth Delinquency Decree
 - Evidence based youth justice
 - Emphasis on responsibility of young offender
 - Clear, fast, constructive and restorative justice oriented reaction
 - Differentiate reaction to crime from welfare/care need
 - Increase variety of reactions available
 - Deprivation of liberty as 'last resort'

New choices for a future youth justice system

- Main objectives of Flemish Youth Delinquency Decree
 - Evidence based youth justice
 - Responsibility of young offender
 - Clear, fast, constructive and restorative justice oriented reaction
 - Differentiate reaction to crime from welfare/care need
 - Increase variety of reactions available
 - Deprivation of liberty as 'last resort'
- End of the typical welfare oriented approach
- Further hybridization around notion 'responsibility'

Between responsabilisation and rehabilitation

- Evidence based youth justice
 - Not a new ambition
 - Part of a wider trend
 - England & Wales: 'Time for a fresh start'
 - The Netherlands: Database Effective Youth Intervention (NJI)
 - ...
 - In criminology
 - debate on rehabilitation
 - *what works?*-question

Between responsabilisation and rehabilitation

- Evidence based youth justice
 - *What works?*
 - Evidence on effectiveness
 - Effectiveness ...
 - ... reduction of 'risk'
 - ... reduction of 'recidivism'

Between responsabilisation and rehabilitation

- Evidence based youth justice
 - *What works?*
 - Risk factor research as answer
 - convincing logic
 - attractive approach to politics and policy makers

‘identify the key risk factors for offending and implement prevention methods designed to counteract them’ (Farrington, 2007: 606)

‘It is important that this evidence is used in decisions about the adoption of prevention services’ (Independent Commission on Youth Crime and ASB, 2010: 5)

Between responsabilisation and rehabilitation

- Evidence based youth justice
 - *What works?*
 - Risk factor research as answer
 - convincing logic
 - attractive approach to politics and policy makers
- However...
 - *'does it actually 'work'?*
 - *'is it a legitimate or desirable strategic aim; that is, can it be justified in principle?'*

(Smith, 2006: 100)

Between responsabilisation and rehabilitation

- Evidence based youth justice
 - *‘Does it actually ‘work’?’*
 - youth crime as a complex social reality
 - individual interventions based on statistical group risks
 - risk factors as ‘black box’

‘questionable jump from the identification of risk factors (...) to the identification and control of ‘risky individuals’” (Case, 2007: 94)

‘if the available evidence cannot tell us how risk/protective factors work, how these factors may precipitate youth offending or how programmes underpinned by them can reduce offending, subsequent research conclusions and ‘evidence-based’ policies and practices are built on sand’” (Case, 2007: 98)

Between responsabilisation and rehabilitation

- Evidence based youth justice
 - *‘Can it be justified in principle?’*
 - children and young people as ‘objects of risk’
 - professionals as blind bureaucrats executing validated programs and protocols

‘formulating cases purely in terms of risk factors, psychological and social deficits, psychological mechanisms and so on (...) runs the risk of treating offenders as objects rather than subjects of lives’ (Ward & Fortune, 2013: 31)

Between responsabilisation and rehabilitation

‘the lack of attention to the active human agent (...) gives rise to the notion of the ‘crash test dummy’ – the proposition that young people are inexorably conditioned by early life factors to become offenders in adolescence’

(Case & Haines, 2009: 20)



Between responsabilisation and rehabilitation

- Responsibility of young offender
 - Evidence based youth justice: risk of ‘reduction’
 - reduction to quantifiable and measurable ‘indicators’
 - reduction of a complex social reality to behavioural problem
 - cf. advise of Dutch Council for Social Development (RMO) on evidence based adolescent criminal law
 - restriction of possible interventions
 - focus on reducing recidivism and criminogenic (risk) factors
 - wider rehabilitation and reintegration goals?

Between responsabilisation and rehabilitation

- Responsibility of young offender
 - Notion of 'responsibility' in new Flemish Youth Delinquency Decree
 - risk of reduction of 'shared' << 'individual responsibility'
 - focus on ...
 - ... negative, retrospective and passive individual responsibility
 - ... risks, deficits and individual failures
 - ... clinical treatment of criminogenic risk factors
 - ... *'why did you do it?'*
- ~ *Risk Need Responsivity model (RNR)*

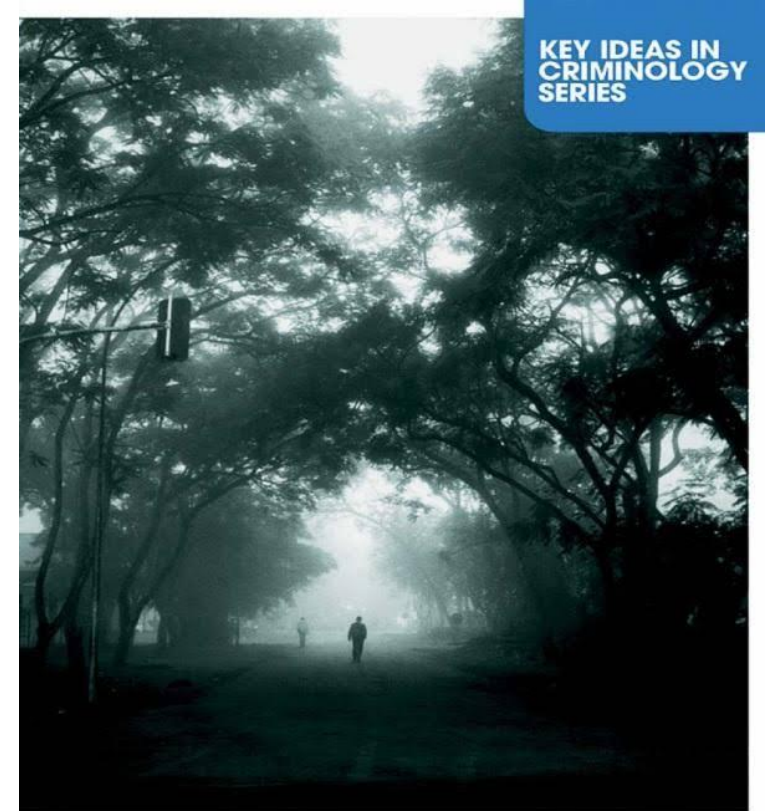
Between responsabilisation and rehabilitation

- Responsibility of young offender
 - Notion of 'responsibility' in new Flemish Youth Delinquency Decree
 - alternative, complementary focus on...
 - ... active, strength-oriented and forward-looking, prospective responsibility
 - ... aspirations, rehabilitation and reintegration
 - ... *'what is to be done?'*
- ~ *Good Lives Model (GLM)*

Between responsabilisation and rehabilitation

'Rather than being preoccupied with risk management, it suggests practitioners develop intervention plans (good lives plans), which help offenders acquire the capabilities to achieve personally meaningful goals' (Ward & Fortune, 2013: 31)

'Any rehabilitation option (...) needs to make sense to clients themselves and be clearly relevant to the possibility of their living a better life' (Ward & Maruna, 2007: 19)



REHABILITATION
TONY WARD & SHADD MARUNA

Conclusion

- Evidence based youth justice
 - Ambitious and possible added value
 - Not without risks
 - reduction of ‘complex, social reality’ to ‘individual, behavioural problem’
 - reduction of ‘what matters’ to ‘what is measurable’
 - reduction of ‘outcome’ to ‘output’

Conclusion

- Responsibility of young offender
 - Nothing wrong with it
 - However, not only...
 - individual, passive, retrospective and deficit-based responsibility
 - clinical 'treatment' of criminogenic risk factors
 - RNR
- A necessary complement
 - supportive, active, prospective and forward-faced responsibility
 - GLM

Conclusion

'the deficit-focused negativity and responsabilising nature of the risk paradigm is challenged by the forward-looking, promotional (of prosocial, positive behaviours) and rights-based nature of the CFOS approach' (Haines & Case, 2015: 29)

